

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2000-485-C - ORDER NO. 2001-545

JUNE 8, 2001

IN RE: Application of USA Digital Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold Telecommunications Services Within the State of South Carolina.	)	ORDER <sup>1/2</sup>
	)	GRANTING
	)	CERTIFICATE FOR
	)	LONG DISTANCE
	)	AUTHORITY

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of USA Digital Communications, Inc. ("USA Digital Communications" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate resold intrastate telecommunications services between and among locations within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 2000), S.C. Code Ann. § 58-9-520 (Supp. 2000) and the rules and regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed USA Digital Communications to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of USA Digital Communication's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied

with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A hearing was convened on March 15, 2001, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Bonnie D. Shealy, Esquire, represented USA Digital Communications. David D. Williamson testified on behalf of the Company. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff. James M. McDaniel, Chief of Telecommunications, and Roy H. Barnette, Auditor, presented testimony on behalf of the Commission Staff.

Williamson is the Regulatory Manager of USA Digital Communications. As Regulatory Manager, Williamson is responsible for the Company's regulatory compliance with all state and federal rules and regulations. Williamson has prior experience in management, advertising, and sales. Prior to joining the Company, Williamson was a consumer banker for the Bank of Oklahoma for two years.

USA Digital Communications seeks to provide resold interexchange telecommunications services within the State of South Carolina. Williamson presented testimony on the Company's financial, technical, and managerial resources. USA Digital Communications was formed to provide resold interexchange telecommunications services. The Company will operate as a switchless, non-facilities based reseller of Qwest Communications and the Company intends to offer a full range of resold interexchange services including intrastate, interstate, and international long distance and various calling card services. The Company does not intend to offer a prepaid or debit

card. Additionally, USA Digital Communications requests that the Commission regulate its services in accordance with the principles and procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C which was approved for AT&T and other similarly situated companies.

Regarding the Company's managerial ability to provide telecommunications services in South Carolina, the testimony reveals USA Digital Communications has been providing telecommunications services for three years in several states throughout the United States. The Company's President, Mark Costello, has over seventeen years experience in the telecommunications industry. Costello also serves as President of American Computer and Telephone Company (Amcat), a predictive dialer provider. He is also the former owner and President of Choice Communications, Inc, a long distance telecommunications reseller. Richard Costello is the Company's Vice President and Secretary and he has over twenty-two years experience in the telecommunications industry. Richard Costello also serves as Chief Executive Officer of Amcat. According to the record, Richard Costello has extensive experience working directly with LECs, long distance carriers, and venders.

The Company's treasurer is Todd Catania. Catania has over twelve years experience in the telecommunications industry. His background includes extensive experience in sales management and customer service. Jack Tullius, the Company's customer complaints and regulatory issues contact person, has over seven years experience in the telecommunications industry. He has extensive experience in

interexchange provisioning, rate structure, sales, and customer service. Tullius was previously employed by Qwest Communications, Inc. and US Long Distance, Inc.

Regarding the Company's financial ability to provide telecommunication services, the testimony reveals USA Digital Communications will spend minimal capital investment to enter the market in South Carolina as a reseller. According to the testimony, costs for providing telecommunications services are limited to the costs of certification and initial marketing. Additional costs incurred for South Carolina customers will be incremental per-call costs assessed by its underlying carriers for switching and transporting calls.

As a reseller of the underlying carrier's services, USA Digital Communications will rely on its facilities-based underlying carrier for the operation and maintenance of the interexchange network. According to the testimony, USA Digital Communications is knowledgeable as to how the capabilities of an underlying carrier can be used by a reseller and will be able to take full advantage of the resources, expertise, and technical capabilities of its underlying carriers. The Company does not plan to construct any new facilities in South Carolina.

According to the testimony, USA Digital Communications has received authority to provide telecommunications services in several states including Arkansas, Delaware, Michigan, Pennsylvania, and Wisconsin. The testimony also reveals that the Company has never been denied certification or had its authority revoked in another state. Moreover, USA Digital Communications has never been the subject of an investigation by a state or federal regulatory body concerning its telecommunications services.

According to Williamson, USA Digital Communications has contracted with Switchless Reseller Services of Norman, Oklahoma to bill its customers for its services on a monthly basis. USA Digital Communications' name, address, and toll-free telephone number will appear on the monthly statement. The Company's personnel will perform customer service functions. The Company intends to focus its marketing efforts to businesses with high volume T-1 installations. Additionally, the Company does not intend to utilize telemarketing.

The Company's customer service department will be available from 8:00 a.m. until 5:00 p.m., Central Time, seven days a week. Customer service orders, inquiries and complaints are handled initially at USA Digital Communications. According to the testimony, depending on the problem, remote servicing is coordinated with the underlying carrier. Moreover, if a customer has a service problem and contacts the Company, a "trouble ticket" is issued to Qwest Communications for remote servicing.

Barnette testified that Staff reviewed the financial statements that were a part of the Company's filing. These financial statements were dated July 31, 2000, and covered the period January 1 through July 31, 2000. Barnette noted that the financial statements indicated the Company has only been operating for a short period of time and is still in the start-up mode. The income and expense statement showed a net profit for the seven months ended July 31, 2000. The Company's balance sheet indicated cash made up 18% of total assets; the current ratio was 1.7; current liabilities were 59.9% of total liabilities; and retained earnings were positive – an indication of past profits. Barnette opined that

USA Digital Communications is in a good financial position to begin operations in the State of South Carolina.

McDaniel presented his findings with respect to Staff's review of the application and tariff of USA Digital Communications. The purpose of McDaniel's review was to determine if the Company's proposed tariff complied with the Commission's regulations, policies and Orders. McDaniel suggested changes to the Company's tariff regarding issues such as deposits and interest, taxes, denial of service and returned check charges. In Williamson's rebuttal testimony, he states the Company will make the changes in its tariff as recommended by Mr. McDaniel.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. USA Digital Communications is organized as a corporation under the laws of the State of Nevada and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. USA Digital Communications operates as a reseller of interexchange services and wishes to provide its services in South Carolina.
3. USA Digital Communications has the experience, capability, and financial resources to provide the services as described in its Application.

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to USA Digital Communications to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for USA Digital Communications for its resale of interexchange services which includes only maximum rate levels for each residential tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. USA Digital Communications shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. USA Digital Communications shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638,

issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2000).

4. If it has not already done so by the date of issuance of this Order, USA Digital Communications shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. USA Digital Communications is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. USA Digital Communications shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If USA Digital Communications changes underlying carriers, it shall notify the Commission in writing.

8. USA Digital Communications shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No.



87-483-C. The proper form for these reports can be found at the Commission's web site at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations For Interexchange Companies and AOS". Be advised that the Commission's annual report for telecommunication companies requires the filing of intrastate revenues and intrastate expenses. USA Digital Communications shall also file with the Commission a copy of its general bill form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622 (1976 and Supp. 2000).

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. USA Digital Communications shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's web site at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this Form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, USA Digital Communications shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and

92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application, USA Digital Communications requested a waiver of 26 S.C. Code Ann. Regs. 103-610. USA Digital Communications would like to maintain its books and records at its headquarters location in Oklahoma. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

12. The Commission adopts a rate design for the long distance services of USA Digital Communications which are consistent with the principles and procedures established for alternative regulation of business services offering set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of USA Digital Communications, including long distance business services, consumer card, and operator service offerings, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting

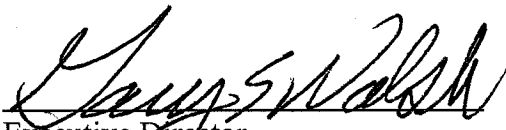
requirements that may be adopted for AT&T shall apply to USA Digital Communications also.

13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)